IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 17622 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BHUPATBHAI @ LARA MATHURBHAI KATARIYA

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 17622 of 2003

Ms. Banna Dutta for MrR DM THAKKAR for Petitioner No. 1

Ms Mita Panchal, AGP for Respondent No. 1-3

CORAM : HON'BLE MR.JUSTICE D.P.BUCH

Date of decision: 05/05/2004

ORAL JUDGEMENT

The petitioner above named has preferred this

petition under Article 226 of the Constitution of India for appropriate writ, order or direction, for quashing and setting aside an order of detention dated 19.9.2003 passed by respondent no.2 herein, in exercise of the powers u/s.3(2) of the Gujarat Prevention of Anti Social Activities Act, 1985 (for short, "the said Act").

2. It was alleged against the petitioner that four offences were registered against him before Kapodra Police Station at C.R.No.76, 141, 142 and 233 of 2003 on 27.2.2003, 13.5.2003, 14.5.2003 and 7.8.2003 respectively relating to the offence punishable u/s. 454, 457, 380 read with Section 114 of IPC.

3. It was also alleged against the petitioner that two witnesses had given statements that the petitioner was a dangerous person. On the strength of the aforesaid registered offences and unregistered cases, the petitioner was found to be dangerous person and with a view to prevent him from carrying on his illegal activities leading to a threat to public order, he was ordered to be detained by the impugned order.

4. Feeling aggrieved by the said order of his detention, the petitioner has preferred this petition before this Court. It has been contended here that on a mere fact that few offences were registered, it could not be said that there was a threat to public order. It has also been contended that names of the witnesses were not disclosed to the petitioner, and therefore, there was a violation of the principle of natural justice. That, therefore, the order of detention is illegal and hence, it may be quashed and set aside.

5. On receipt of the petition, Rule was issued and in response to the service of notice of Rule, Ms.Mita Panchal, learned AGP has appeared on behalf of the respondents. I have heard the learned advocates for the parties and have perused the papers.

6. At the final hearing, learned Advocate appearing for Mr D M Thakkar, learned Advocate for the petitioner states that two other co-accused - Bhola Shankar and Bhavesh Devashankar were also detained in connection with the aforesaid four offences. She also states that two witnesses had given common statements against the petitioner as well as against the aforesaid persons. She also states that the aforesaid detenus were also detained by similar and identical order of detention by the Commissioner of Police, Surat. She also states that the said detenus had preferred Special Civil Applications

No.1117 and 1118 of 2004 against their detention. She also states that their Special Civil Applications have been allowed and the detention order against them have been quashed and set aside on factual merit.

7. On hearing, it is found that the case of the petitioner and the case of the aforesaid two detenus stand on par and, therefore, when the detention orders against the aforesaid two persons have been quashed on factual merit, then in that event, on applying the principles of parity, the present petition is also required to be allowed and the present petitioner is also required to be extended the same benefit.

8. Therefore, for the reasons stated above and the reasons stated in Special Civil Applications No.1117 and 1118 of 2004, this petition is allowed. The impugned order dated 19.9.2003 passed by respondent No.2 is ordered to be quashed and set aside. The detenu is ordered to be set at liberty forthwith, if no longer required in any other case. Rule is made absolute to the aforesaid extent. No order as to costs. D.S. permitted.

[D P Buch, J.]
msp